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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,390	02/14/2005	Frederic Delcroix	MART0870US	6155
24235 7590 02/27/2009 LEVINE & MANDELBAUM 222 Bloomingdale Road Suite 203 WHITE PLAINS, NY 10605				
EXAMINER ELOSHWAY, NIKI MARINA				
ART UNIT 3781		PAPER NUMBER		
MAIL DATE 02/27/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/524,390

**Applicant(s)**

DELCROIX ET AL.

**Examiner**

NIKI M. ELOSHWAY

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2 and 4-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bommart (U.S. 5,151,202) in view Song (U.S. 4,358,908). Bommart teaches a cover 85 for closing a top opening of a thermite reaction chamber of a crucible 11. The cover 85 has a bottom peripheral edge at 91 which seals against top peripheral edge 44 of the crucible. The material of the cover is disclosed as being agglomerated sand (see col. 15 lines 49-61). The downwardly extending peripheral rim of the cover is shown at lead line 89. The centering means is considered to be the outer wall of the downwardly extending peripheral rim of the cover.

Bommart does not teach the filter lining at the bottom edge of the cover, instead Bommart teaches venting through a separate venting aperture at 97. However, it is well known to provide the venting of a container at the closure/closure support junction. Song teaches that it is known to provide a filter at the closure/closure support junction to allow for venting (see element 39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cover of Bommart replacing the venting aperture 97, with the venting and filter at the closure/closure support junction, in order to simplify the shape of the cover, so that it is easier to manufacture.

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bommart (U.S. 5,151,202) in view Song (U.S. 4,358,908), as applied to claim 2 above, and further in view of Hargraves et al. (U.S. 4,966,780). The modified cover of Bommart discloses the claimed invention except for the filter lining

being made of synthetic fibers. Hargraves et al. teach that it is known to provide a filter of synthetic fibers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified cover of Bommart with the filter lining being made of synthetic fibers, in order to easily manufacture the filter lining using a well known, durable materials.

#### ***Response to Arguments***

4. Applicant's arguments filed September 16, 2008 have been fully considered but they are not persuasive. Applicant argues that the cover of Brommart does not that the cover is substantially continuous. The Examiner disagrees with this position. The specific limitation of claim 1 reads "said cover being substantially continuous". This limitation is too broad to define the claimed invention over a cover with a vent. Using the phrase "substantially continuous" to define a cover could mean that the cover has a substantially continuous perimeter or that the cover is substantially continuous in height. Covers with venting openings can be considered "substantially continuous" to the degree set forth in the claim.

5. Applicant argues that the filter material of the secondary reference of Song is not secured to the cover. Claim 1 recites that "said bottom edge having secured thereto a filter lining that is annular. Song teaches a filter lining at the bottom edge of the cover. The filter lining of Song is considered secured to the bottom edge because it is sandwiched between the bottom edge of the cover and the container channel. The filter lining of Song is secured to the both the bottom edge of the cover and the container, when the cover is placed onto the container rim.

6. Regarding the modification of Brommart using the teachings of Song, Applicant argues that an annular rim is affixed to the outside wall and the cover walls extend into a channel in the annular rim. This is incorrect. The general structure of the Brommart cover and container is not altered. The rejection

Art Unit: 3781

above calls for the addition of a filtering material at the closure and container juncture. The cover can bear upon the container rim without being in contact therewith.

7. In response to applicant's argument that Brommart and Song nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both references are drawn to venting container systems.

8. Applicant argues that Brommart does not teach the newly added limitations of claim 1. The Examiner disagrees with this position. The newly added limitations of claim 1 recite that the weight of the cover being sufficient "to prevent dislodgement in response to the pressures developed during a thermite reaction, and light enough to enable the filter lining to allow gases developed in the thermite reaction to escape from the thermite reaction chamber while retaining dust and projected particles." Although the cover of Brommart is sealed by use of a luting paste, the claim only requires that the weight of the cover be sufficient to prevent dislodgement and light enough to enable filtering. It is the Examiner's position that the cover of Brommart has a weight sufficient to prevent dislodgement of certain pressures developed during thermite reaction. It is also the Examiner's position that the cover of Brommart is light enough to enable the filtering lining to allow gases to escape under certain conditions.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

Art Unit: 3781

shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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